

**ORIGINAL**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

U.S. DISTRICT COURT  
NORTHERN DIST. OF TX  
FORT WORTH DIVISION

NOV 16 AM 8:32

CLERK OF COURT

UNITED STATES OF AMERICA

v.

JOSUE MARTINEZ-GARCIA (01)

§  
§  
§  
§  
§

NO. 4:12-CR-168-A

**OBJECTION TO USE OF ALLEGED ALIAS ("CHOLO")  
IN STYLE OF CASE AND BY COURT**

The Defendant, Josué Martínez-García, by and through his undersigned attorney of record, hereby makes and asserts this his *Objection To Use Of Alleged Alias ("Cholo") In Style Of Case And By Court*, requests this Honorable Court to him by given name only, and would respectfully show unto the Court as follows:

**I.**

This case involves a factual dispute as to whether the Defendant is known as "Cholo" to certain other persons, and whether the person they have referred to as "Cholo" is indeed the Defendant. Under the Constitution and laws of the United States, Defendant is entitled to have all facts determined by a jury. *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *Blakely v. Washington*, 542 U.S. 296 (2004), *United States v. Booker*, 543 U.S. 220 (2005).

This Court previously issued an order which, if shown to a jury, might lead them to believe that the Court had already determined that the Defendant was indeed known as

"Cholo." In the original trial scheduling order, the Court tracked the government's language as to the style of the case and referred to the case and the Defendant as follows:

UNITED STATES OF AMERICA

VS.

JOSUE MARTINEZ-GARCIA  
a/k/a "Cholo," et al.

§  
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§  
§

NO. 4:12-CR-168-A

By

Deputy

ORDER

The court ORDERS that:

1. This case is set for jury trial before the Honorable John McBryde at 8:30 a.m. on October 9, 2012, at which time and date JOSUE MARTINEZ-GARCIA a/k/a "Cholo" ("defendant"), counsel, and all witnesses will be present in the Fourth Floor Courtroom, United States Courthouse, Fort Worth, Texas.

Case 4:12-cr-00168-A, Document 27, Filed 08/22/12.

Defendant objects to any document being shown to or read to the jury in such a way as to infer that the Court has already made a determination, or has some opinion or belief, as to the disputed fact issue of whether Defendant is the person identified by others as "Cholo." Specifically, counsel objects to the Indictment being presented to the jury in such a way as to indicate the Court accepts that the defendant is also known as Cholo. Counsel further objects to the charge and/or verdict form being presented to the jury in such a way as to indicate the Court accepts that the defendant is also known as Cholo.

II.

Moreover, the use by the Court of the term "Cholo" as referring to the defendant is

highly prejudicial and improper. The term “Cholo” is a centuries-old derogatory term with racial implications. Perhaps this is a term the government witnesses will use and say applies to the defendant. However, it is beneath the dignity of this Court to address any person charged and tried before him with an insulting nomiker.

## Cholo

From Wikipedia, the free encyclopedia

*For other uses, see Cholo (disambiguation).*

**Cholo** (Spanish pronunciation: [ˈtʃolo]) is an ethnic slur created by Hispanic criollos in the 16th century. In sociological literature, it is one of castas,<sup>[1]</sup> and refers to individuals of mixed or pure American Indian ancestry, or other racially mixed origin. The precise usage of “cholo” has varied widely in different times and places. In modern American usage, it most often applies to a low-income Mexican-American sub-culture and manner of dress.



"A Mestizo with a Native produce a Cholo". Indian school, 1770.

## PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant Josué Martínez-García prays the Court make such findings as are necessary and appropriate, allow and sustain the objections made herein, order that no case style or other court document be published in any manner to the jury in such a way as to appear or infer that the Court has determined, believes, allows, or otherwise has an opinion as to whether the term “Cholo” applies to the defendant,

[remainder of page blank]

and grant to Defendant all relief to which he may be entitled.

Respectfully submitted,



/s/ Todd A. Durden

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*Attorney for Defendant Josué Martínez-García*

#### **CERTIFICATE OF CONFERENCE**

I hereby certify that I have conferred with the attorney for the government regarding the above and foregoing motion, and at the time of conference the attorney for the government was unable to say definitively whether the motion would be opposed or not.



/s/ Todd A. Durden

Todd A. Durden  
*Attorney for Defendant Josué Martínez-García*

### CERTIFICATE OF SERVICE

I certify that on November 16, 2012, true and correct copies of the above and foregoing document were served either by hand-delivery, or by mail by being sealed in an envelope properly addressed with the proper postage affixed, and placed into an official repository of the United States Postal Service, to (1) the government by and through Assistant United States Attorney Matthew Gulde, Department of Justice, Northern District of Texas, Fort Worth Division, 801 Cherry St., Suite 1700, Fort Worth, Texas 76102-6897; the original and one Judge' copy were filed the District Clerk in accordance with LCrR 49.2(b).



/s/ Todd A. Durden

Todd A. Durden

*Attorney for Defendant Josué Martínez-García*